

SUPPORT FOR THE AMENDMENTS

The present amendment adds new claim 21. New claim 21 recites that component b) includes at least one polyethylene glycol of general formula H-O-(CH₂CH₂-O)_nH, wherein n is an integer of from 8 to 150.

Support for newly added claim 21 is found in the originally filed application at page 6, lines 1-5, page 12, Table, as well as claims 5 and 6. The originally filed application indicates that n is an integer of 1 to 150, preferably 1 to 25 (See e.g., page 6, lines 1-5, claims 5 and 6). Polydiol 400 is exemplified (See e.g., page 12, Table). Polydiol 400 is polyethylene glycol having an average molecular weight of 400 g/mol. Accordingly, Polydiol 400 has an ethylene oxide repeat unit of approximately 8.67.

A skilled artisan would immediately recognize that such a disclosure intrinsically and inherently encompasses ethylene oxide repeat units in the general formula H-O-(CH₂CH₂-O)_nH, wherein n is from 8 to 150. As a result, the disclosure of the originally filed application provides sufficient written description for the recitation of n being from 8 to 150.

Pursuant to *In re Wertheim*, 541 F.2d 257, 265 (1976), the exact terms recited in the claimed invention need not be used *in ipsis verbis* or *in haec verba* in order to satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. See also MPEP §§ 1302.01 and 2163.05(III). What is required is that the claimed invention must have been described with sufficient particularity such that a skilled artisan would recognize that the Applicants had possession of the claimed invention when the application was filed.

Applicants submit that a skilled artisan would immediately recognize that adequate support for the presently claimed invention has clearly been provided by the express, implicit and inherent disclosure set forth in the originally filed specification and claims, as evidenced hereinabove. Based on the foregoing, it is therefore believed that the addition of new claim 21 has not resulted in the introduction of new matter.

REMARKS

Claims 1-21 are currently pending in the present application. New claim 21 has been added by the present amendment. Claims 4 and 20 stand withdrawn from consideration by the Examiner as being directed to a non-elected invention.

The rejection of claims 1-3 and 5-19 under 35 U.S.C. § 103(a) as being obvious over Viscovitz (WO 01/30315) in view of Kipp (U.S. 2004/0022862), as evidenced by Chiarelli (U.S. 2003/0147825), is respectfully traversed, with respect to claims 1-3, 5-19 and 21.

Claim 1 is directed to a skin cleansing agent comprising: (a) 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine; (b) 30-70 wt. % of at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150; (c) 1-30 wt. % of at least one fatty alcohol polyglycol ether; (d) 0.1-5 wt. % of at least one complexing agent; (e) 0-30 wt. % of at least one reducing or oxidizing agent; (f) 0-25 wt. % of one or more abrasives; (g) 0-10 wt. % of at least one polyhydric alcohol; (h) 0-3 wt. % of water; (i) optionally one or more viscosity-building agents; and (j) optionally one or more cosmetic adjuvants, additives and/or active substances, wherein the sum of components (a)-(j) constitutes 100 wt. % of the cleansing agent.

Viscovitz describes a skin cleansing composition suitable for removing ink stains, comprising a low molecular weight C₁-C₁₂ alcohol (e.g., alkanol) (See e.g., abstract, page 1, lines 4-9, page 4, lines 3-6 and 23-33, page 5, lines 1-4). Viscovitz describes that the skin cleansing composition may further comprise additives (e.g., ink solubilizing agents, fillers, abrasives, detergents, thickeners, surfactants, pH adjusters, chelating agents, fragrances, colorants, opacifiers, pearlizing agents, vitamins, antimicrobial agents) (See e.g., abstract, page 6, line 31 to page 9, line 9). Viscovitz describes that the skin cleansing composition should have a pH of 4-12, preferably 4-8, and that less than 1 wt. % of any acid (e.g., citric acid, lactic acid, acetic acid, glycolic acid and gluconic acid) compatible with the ingredients of the skin cleansing composition can be used as a pH adjuster (See e.g., page 8, lines 19-24).

Kipp describes a method for preparing small particles of organic compounds comprising: dissolving the organic compounds in a water-miscible first solvent to form a solution; and mixing the solution with a second solvent to precipitate the organic compounds in an aqueous medium to form a pre-suspension (See e.g., abstract, [0004], [0008], [0049]). Kipp describes a plethora of various solvents that may be suitable for use in the above-mentioned process (See e.g., [0058]-[0064]). Kipp describes polyethylene glycol and various derivatives thereof among a tremendously large genus of suitable solvents (See e.g., [0063]).

Chiarelli describes a personal skin care composition comprising: an aqueous liquid phase; a non-aqueous phase; and inverse emulsion polymer (See e.g., abstract, [0012]-[0016], [0020]-[0025], claims 1, 22 and 32). Chiarelli describes that the personal care composition may further comprise other additives (e.g., humectants, emollients, fragrances, biologically active materials, botanical extracts, conditioners, sunscreens, pharmaceutical actives, conditioning polymers, vitamins, cleansing surfactants, preservatives, opacifiers, rheology modifiers, emulsifiers, chelating agents, neutralizing agents and pH adjusters, spreading aids, viscosity adjusters, and colorants) (See e.g., [0074], [0075]). Chiarelli describes PEG-15 cocamine among a tremendously large genus of neutralizers and pH adjusters (See e.g., [0109]).

Applicants respectfully submit that a skilled artisan would not have been motivated to combine Kipp with the *clearly unrelated references* of Viscovitz and Chiarelli, since Kipp is directed to a method for preparing small particles of organic compounds by precipitating the organic compounds in an aqueous medium to form a pre-suspension followed by adding energy to stabilize a coating of the small particles or to alter the lattice structure of the small particles, whereas Viscovitz is directed to a skin cleansing composition suitable for removing ink stains and Chiarelli is directed to a personal care composition.

Kipp mentions polyethylene glycol and various derivatives thereof among a *tremendously large genus* of suitable solvents. Applicants therefore submit that even if sufficient motivation and guidance is considered to exist for a skilled artisan to combine Kipp with the unrelated references of Viscovitz and Chiarelli, which is clearly not the case, a skilled artisan would not have arrived at the skin cleansing agent of the present invention comprising the claimed combination of (a) 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine and (b) 30-70 wt. % of at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150, based on the disclosures of the cited references, *absent impermissible hindsight reconstruction*, thereby precluding a *prima facie* case of obviousness.

The mere fact that a claimed species is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. See e.g., *In re Baird*, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); and *In re Jones*, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992). A *prima facie* case of obviousness requires that the prior art provide a skilled artisan with sufficient motivation and guidance to arrive at the claimed compounds. See e.g., MPEP § 2144.08(II)(A)(4), *Takeda v. Alphapharm*, 83 USPQ2d 1169, 1174 (Fed. Cir. 2007); and *In re Lalu*, 223 USPQ 1257, 1258 (Fed. Cir. 1984). A reference must be considered in its entirety, including disclosures that teach away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983).

The Examiner alleges on page 4, lines 7-8 of the Official Action that “PEG-15 cocamine is utilized in the Viscovitz composition as a pH adjuster.” This allegation constitutes clear error which is unsustainable on appeal.

Contrary to the Official Action, Applicants submit that sufficient motivation and guidance does not exist for a skilled artisan to particularly select the PEG-15 cocamine of Chiarelli from among the tremendously large genus of neutralizers and pH adjusters described therein and known to those of ordinary skill in the art for use in place of the acid pH adjusting agents described in

Viscovitz. Viscovitz describes and exemplifies the use of acids (e.g., citric acid, lactic acid, acetic acid, glycolic acid and gluconic acid) as pH adjusters. One of ordinary skill in the art would immediately recognize that the acids of Viscovitz have *fundamentally different physicochemical properties* from the PEG-15 cocamine of Chiarelli. A skilled artisan would not particularly select the PEG-15 cocamine of Chiarelli among the tremendously large genus of neutralizers and pH adjusters described therein and known to those of ordinary skill in the art for use in place of the acid pH adjusting agents described and exemplified in Viscovitz absent impermissible hindsight reconstruction, thereby precluding a *prima facie* case of obviousness.

Even if sufficient motivation and guidance is considered to exist for a skilled artisan to particularly select the PEG-15 cocamine of Chiarelli for use in place of the acid pH adjusting agents of Viscovitz, which is clearly not the case, Viscovitz discloses that the acid pH adjusting agents are present in an amount of ***less than 1 wt. %***, based on a total weight of the skin cleansing composition, which ***clearly outside*** the claimed range of ***1-70 wt. %*** of at least one ethoxylated amine and/or ethoxylated diamine. Accordingly, Viscovitz ***explicitly teaches away*** from the skin cleansing agent of the present invention comprising 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine, as presently claimed.

A *prima facie* case of obviousness for arriving at the claimed range of 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine by routine experimentation has not been established. A particular parameter must first be recognized as a result-effective variable before the determination of the optimal ranges of said variable may be characterized as routine experimentation. See e.g., MPEP § 2144.05(II)(B); *In re Antonie*, 195 USPQ 6, 8, 9 (CCPA 1977). Since Viscovitz is completely silent as to the composition described therein containing any ethoxylated amine and/or ethoxylated diamine whatsoever, Viscovitz necessarily fails to recognize that said component is a result-effective variable that may be optimized by routine experimentation. Accordingly, a skilled artisan would not have been motivated to arrive at the claimed range of 1-70

wt. % of at least one ethoxylated amine and/or ethoxylated diamine by routine experimentation, based on the limited disclosure of Viscovitz, absent impermissible hindsight reconstruction, thereby precluding a *prima facie* case of obviousness.

Assuming *arguendo* that sufficient motivation and guidance is considered to have been provided by the cited references to arrive at the skin cleansing agent of the present invention comprising the claimed combination of (a) 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine and (b) 30-70 wt. % of at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150, which is clearly not the case, such a case of obviousness is rebutted by a showing of *unexpected results*.

As discussed in the present specification, Applicants have discovered that the skin cleansing agent of the present invention, which comprises the specific combination of (a) 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine (e.g., Ethoduomeen OV/13 and/or Ethomeen OV/12) and (b) 30-70 wt. % of at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150 (e.g., Polydiol 400), in accordance with an exemplary aspect of the present invention, *surprisingly exhibits a remarkable ink cleansing effect that is comparable to that of conventional skin cleansing agents which alternatively comprise up to 2.8 wt. % of free diethanolamine* (See e.g., paragraphs [0007]-[0013], [0048] and [0049] of the published specification of Blaeser, U.S. 2007/0041927).

In addition, as shown by the comparative experimental data presented in the 37 C.F.R. § 1.132 Declaration appended herewith, Applicants have demonstrated that the formulation of Example A, which contains the specific combination of (a) at least one ethoxylated amine and/or ethoxylated diamine (e.g., PEG-2 rapeseed amine) and (b) at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150 (e.g., PEG-8), which is representative of the invention claimed in the above-identified U.S. patent application, exhibits an unexpectedly superior ink cleansing effect as compared to the conventional formulation of

Comparative Example B having an identical composition, but replacing PEG-2 rapeseed amine with an equivalent amount of an alkali hydroxide (e.g., KOH) as a pH regulator.

When considering whether proffered evidence is commensurate in scope with the claimed invention, Office personnel should not require the Applicant to demonstrate superior or unexpected results over the entire range of properties possessed by a chemical compound or composition. See e.g., *In re Chupp*, 2 USPQ2d 1437, 1439 (Fed. Cir. 1987).

Viscovitz, Kipp and Chiarelli, when considered alone or in combination, fail to recognize that unexpectedly superior ink cleansing properties are exhibited by the skin cleansing agent of the present invention comprising the claimed combination of (a) 1-70 wt. % of at least one ethoxylated amine and/or ethoxylated diamine and (b) 30-70 wt. % of at least one polyethylene glycol of the general formula HO-(CH₂CH₂-O)_nH, wherein n is an integer of from 1 to 150.

It should also be mentioned that with respect to newly added claim 21, the low molecular weight alcohols of Viscovitz are *limited to alcohols having only 1 to 12 carbon atoms*, which is *clearly outside* our claimed range of 16 to 300 carbon atoms. That is, when n is an integer of 8-150, as presently claimed in new claim 21, the polyethylene oxide repeat unit where n is 8 has 16 carbon atoms, and where n is 150 has 300 carbon atoms. Based on the disclosure of Viscovitz, a skilled artisan would neither have been motivated nor had a reasonable expectation of success to arrive at the polyethylene glycol of general formula H-O-(CH₂CH₂-O)_nH, wherein n is an integer of from 8 to 150, as recited in new claim 21.

Withdrawal of these grounds of rejection is respectfully requested.

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In conclusion, Applicants submit that the present application is now in condition for allowance and notification to this effect is earnestly solicited.

Respectfully submitted,

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